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**UNDERSTANDING THE DIVISION OF POWER IN THE REALM OF ISSUES
DEVELOPED DURING AND POST COVID-19**- Kanika Balhara¹**ABSTRACT**

The year 2020 presented the world order with a grave challenge. A challenge not only in the health sector but also in the arena of power-sharing, establishing accountability and fetching desired results. The coronavirus presented the world's governments, including India, with tackling an invisible threat with visible and diminishing resources.

The humongous challenge of protecting the world's largest democracy from devastating impacts required role and responsibility sharing clarity. Conversely, we came across harsh lockdowns, harsher policy measures and an exchange of blame games between the different organs of the state. In a tussle of such magnitude, various agencies assumed different roles, each significant and required.

More startling was the idea that neither the Central nor the state governments attempted to clarify the melange one may have noticed regarding disaster management of such a vast scale. For example, the zone characterisation into 'red' and 'orange' received sharp reactions from a few States. The States had requested more self-sufficiency and decision-making powers in notifying such orders. This is despite State consultation being a requirement commanded under the Disaster Management Act of 2005.

Thus, the present article attempts to understand how a disaster of such vast magnitude brought to the fore a plethora of lacunae and shortcomings in the power-sharing arrangement under the Constitution of India as well as other laws that were required to establish coordination and cooperation between units, yet failed on most fronts, more or less. Understanding how we can modify the current legislative and administrative standards is also essential.

INTRODUCTION

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The politico-socio-economic paraphernalia of each country makes it all the more imperative to demarcate the power-sharing arrangement. One may seek an answer as to why such clear division is required. But, clearly defined areas of functions can be one method of avoiding conflict of interest, avoiding duplication efforts and ensuring accountability. *Federalism* can be understood as a form of Government in which functions, duties and powers are divided between the central, state and local governments so that each of them, within its sphere, can deliver independently of the other. It emphasises the distribution of authority between two levels of government and focuses on explaining the relationship between the governments and the public through such distribution of powers.

Federalism has been instrumental in accommodating the diversities in our political system and acting as a mechanism for integration in international economic and political relations. The federal idea can be traced back to Greek and Ancient Indian political writings, including the monumental work of Kautilya, *Arthashastra*. In recent decades, the nature of the federal system of government has undergone tremendous yet valuable changes due to various social, political and economic factors. This growing pace of federalisation of resources and power requires modifications in the patterns of Federal provincial or union-state relations in these countries. With the ongoing and ever-changing political, cultural, economic, and social changes at an unparalleled rate, federal systems are experiencing continuous transformation. The problems faced by most of the national countries are common, though the situations in each federation are different. The experiences of other federations and confederations provide valuable insight into the consequences of various federalism arrangements. It is not only the success stories but the problems faced by the unions that act as a learning platform for federal countries worldwide.

Federalism may be called an excellent plan of 'living together' in the matrix and network course of action of what Daniel Elazar terms '*self-rule plus shared rule*'². Federalism is a unique hypothesis of nation and state building. It is a hypothesis about standardised political collaboration and concurrence. As a hypothesis to nation building, federalism looks to characterise state-society connections in such a way as to permit independence of personality and identity of social gatherings to prosper in the intrinsically made sure about and ordered institutional and political space. The federal constitution perceives the uncommon social

² Arthur. Benz, *Shared Rule vs Self-Rule? Bicameralism, Power-Sharing and the 'Joint Decision Trap*. SCIENDO [July 07, 2023, 10:12 am]

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privileges of individuals, particularly minorities. In this sense, it is very much akin to the hypothesis of multiculturalism, yet unique because the amenities of federalism lie in its critical weight on the systematisation of assorted varieties and encouraging socio-political collaboration between two arrangements of characters through different auxiliary components of 'shared rule'³. "Federalism is a political organisation in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions."⁴

UNDERSTANDING THE FEDERAL SYSTEM THROUGH CASE LAWS

In several judgments, the Supreme Court of India has commented on the nature of the Indian Union of States. The apex court has reiterated that the Indian federalism model is non-traditionalistic yet very pragmatic within the meaning of what constitutes a federal state.⁵ The courts reinstated and repeated the same in *Ganga Ram Moolchandani v. State of Rajasthan* and *ITC LTD v. Agricultural Produce Market Committee*⁶. It has elaborated on the essence of a 'federation' in Indian democracy, such as the existence of the Union and the States and the distribution of powers between them.

In *S.R. Bommai vs Union of India*⁷, the apex court has noted that the commonly invoked model of federalism is that of the United States, by which it is clear that the U.S.A is a federation of States. These States were earlier independent and sovereign in their geographical limits and territories and decided to form a union. According to such a settled agreement between the Federal and the State governments, their parts cannot be altered by the federal government. In India, on the other hand, the Parliament has the power to create new States, admit new States, transform their boundaries and make changes to their names, and unite or divide the States. The concurrence or consent of the State(s) is optional for forming and unmaking States and Union Territories. This remains the sole prerogative of the central government. Further, the court held that several provisions of the Constitution allow the Centre to exercise and override its

³ Ibid.

⁴ Craig Volden "Origin, Operation, and Significance: The Federalism of William H. Riker." *Publius*, vol. 34, no.4, 2004, 89–107. *JSTOR*, [July 07, 2023 04:17 pm] www.jstor.org/stable

⁵ Pradeep Jain v. Union of India [1984] AIR 1420, 1984 SCR (3) 942. (India)

⁶ ITC LTD v. Agricultural Produce Market Committee [1985] Supp SCC 476. (India)

⁷ S. R. Bommai v. Union of India [1994] 2 SCR 644 : AIR 1994 SC 1918. (India)

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powers over that of the States. In legislation, there is a Concurrent List, unlike in the U.S.A., which outlines the federal government's powers and leaves any matter not mentioned as the legislative field for the States.⁸

In India, the residuary powers of legislation, the ability to make law in a field not specified in the Constitution, are vested in Parliament, whereas in the U.S.A, residuary forces are with the States. Further, in fiscal matters, the ability of the States to raise their resources is limited, and there is a good deal of dependency on the Centre for financial assistance. Even though the States are sovereign in their prescribed legislative field, and their executive power is co-extensive with their legislative powers, it is clear that the forces of the States need to be coordinated with the Union. This is why the Constitution is often described as 'quasi-federal'.

COVID-19 AND FEDERALISM

India's unwavering efforts in vanquishing Covid-19 effectively are based on Center-State cooperation and collaboration. Numerous exigencies in the recent past have been found to test the establishment of our government's federal promises, yet none has been as cruel as this pandemic. Also, when India's achievement in overcoming COVID-19 effectively settles upon Center-State coordinated effort, it is for sure its pledge to federalism that is under the most strain⁹.

FISSURES IN FEDERAL PRINCIPLES

Recent advancements have brought to our notice the crevices in Center-State collaboration. For example, the zone characterisations into 'red' and 'orange' has been received sharp reactions from a few States. The States have requested more self-sufficiency and decision-making powers in notifying such orders. This is despite State consultation being a requirement commanded under the Disaster Management Act of 2005. Under the statute above, mandatory and binding guidelines about COVID-19 are being given by the Union to the States.

⁸Venkataraman, K. "Explained: India's Asymmetric Federalism." *The Hindu*, Aug. 11 2019, <https://www.thehindu.com/news/national/the-forms-of-federalism-in-india/article28977671.ece>.

⁹*In re*. Distribution of essential supplies and services during the pandemic Suo Motu Writ Petition (Civil) No.3 of 2021

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The Act provides for producing a 'National Plan' and issuing restricting rules¹⁰ by the Union to States in pursuing the objectives of the so-called National Plan. The National Plan is a more compulsory document to be complied with. Presently, the act orders States to be consulted before formulating a comprehensive 'National Plan' and, to that degree, when the compelling rules are given under such a plan. In any case, the Union has not defined the extent of the National Plan and has chosen to react to COVID-19 exigencies through temporary guidelines and rules given to States to render bling compliance.

The Union has additionally pronounced that Corporates giving donations to PM-CARES can benefit CSR exceptions: ^{those} giving gifts towards any Chief Minister's Relief Fund will not be given similar exemptions. This disincentives corporates to provide donations for any Chief Minister's Relief Fund and makes the States largely subordinate and dependent upon the Union. Moreover, it has been found that the union is forcing upon the states its superior powers even during this crisis period. For example, the Kerala government had given new and revised guidelines in mid-April following an almost impeccable recovery rate and a precarious fall in cases. Despite such promising results, the union government needed to confide in the insight and judgement of the State government on the issue. ¹¹

Further, the incomes or revenues of a few States have diminished in light of alcohol being banned and not open for sale. This has resulted in a complete loss for the States as alcohol is a significant source of revenue for states. Reduced sales of petroleum and diesel, no land dealings and Registering of contracts have also denuded the state treasuries. States' GST collections have likewise been miser and mostly dried because of inadequate compensation and growing arrears with the Union. This has made it hard for States to settle costs, payments of monthly salaries, annuities and government social sector schemes. This requires the Union to see the States as equivalentents, and reinforce their abilities, rather than expanding their reliance upon itself.

Understanding power division during the Pandemic under Schedule VIII

Disaster Management as a subject of legislation fails to find a place neither in List II or List III nor does a specific topic in List I explicitly govern this. In this analogy, the DMA, 2005 could

¹⁰ Ibid. s. 6

¹¹ Prashant Bhushan: Shyam Aggarwal, The Hindu "*Riding roughshod over State governments*" July 13, 2023 <https://www.thehindu.com/opinion/op-ed/riding-roughshod-over-state-governments>

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just have been legislated upon by the Parliament in the exercise of its residuary forces of law-making under *Article 248*, read with *Entry 97 of List I*.

The query is that the Act can be applied in all or in complete form for managing a pandemic, especially the one in the form of COVID-19. The DMA permits the Union to give directions, guidelines or commands to the States to relieve any disaster's impacts. The meaning of disaster under the Act is vast and expansive.¹² It would incorporate a pandemic as well. Such a perusing of the DMA would vest the Union government with powers to give guidelines and directions to State governments for managing the pandemic in their respective geographical units, which is what the Union has been doing. In contrast, public health and sanitation is a subject of legislation under List II. This would mean that States have the sole power and law-making authority to administer and act on issues concerning public health.

A significant caveat must be addressed at this point of conflict and contradictions. Under *Entry 29 of List III*¹³, both Parliament and States can make laws on issues that include the spread of infectious or communicable or contagious diseases between two or more states. Along these lines, Parliament would be right to pass a law that permits the Central government to give directions and guidelines to the States to prevent the spread of an infection like COVID-19 between two or more states—the DMA is more explicit about disasters in general but not pandemics in specific. And thus, the DMA, sanctioned under Parliament's residuary powers, cannot be applied to managing and preventing the spread of a contagious disease, in which COVID-19 fits absolutely.

Additionally, the Epidemic Diseases Act of 1897, whose objective of preventing "... *the spread of dangerous epidemic diseases.*" is in place and very much existent. Under this Act, the State governments have the power to take fitting measures to contain the spread of an infectious or contagious illness in their respective territorial regions. The Central government's ability is restricted to taking steps for examining and keeping people going out of or into the nation. Regardless of whether the act was to be revised, it would not engage the Central government to

¹² Disaster Management Act of 2005, s. 2(d)

"disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

¹³ Entry 29 of List III:

Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

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give directions and guidelines to the States to contain the pandemic inside the State. All it can do is deal with the spread of the infection between two or more states. In this way, rather than invoking provisions of the Epidemic Diseases Act which offers forces to the States, the union has applied the DMA, which has empowered it to trample State governments. This is an unconstitutional resort of the Union. The States are not lawfully bound to seek and go through the bearings/rules given by the Central government and would be well inside their privileges to challenge them in the apex court.

CONCLUSION

*“Centre deals with files, State deals with lives.”*¹⁴ There is an incessant feeling that in the post-COVID world, most nations will see local, state or regional governments assuming a bigger job in moulding individuals' lives and deciding their lives. The post-COVID- 19 environment poses an essential question about what it would mean for Centre-state relations and national and regional legislative issues. The union government's job will be significant in treating the economic and fiscal related outcome, restoring movement between states, and developing individuals and commodities.

In any case, the prompt test of medical care, advancements, public health, and universalisation of health and insurance policies shall proceed with the flexibility of necessities. It will remain the duty of the union and the state governments. How Both the two levels of government shall settle the issue of insufficient monetary assets, given falling incomes because of the log jam and rising cases arrears on the open exchequer, will be a crucial issue in Centre-state relations. How the union government can re-declare its job of harbinger of peace and development would be possible only through open spending and investments in all sectors of the economy.

Given the size of the pandemic and the emergency posed after that, this is undoubtedly an unusual case. The union will itself need to hand over cash to the states to help them in their efforts to neutralise the havoc caused by the pandemic. This would not just lift the state's exchequer, slightly warming from a Centrally-sponsored scheme, but permit each state to spend according to their necessities. Given the Indian Union's tremendous assorted variety regarding well-being, this is basic.

¹⁴Words of Sh. KC Sivaramakrishnan - bureaucrat and former chairman of the Delhi-based think-tank Centre for Policy Research

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Suggestions

- a. The best approach to protect "*India, that is Bharat*" as a "Union of States" is to work towards sharing powers from the grassroots of Panchayats/Municipalities to parliament. As much as the states and the central government are responsible for the welfare of the people, the local governments are better positioned to understand needs and the actualground situation. The other two units, i.e. the central and the state governments,must provide the necessary funds for curative and preventive purposes.
- b. The recommendations presented under the Sarkaria Committee Report on *Centre-State relations* [dated June 9, 1983, Government vide Ministry of Home Affairs] must be adopted in great detail and spirit. It will provide a framework for defining role sharing, fixing accountability and bringing desired results.
- c. There is a grave and urgent need to revise and reinvent the laws relating to disaster management. There is overlapping and duplication, often leading to dismal performance and making it difficult to undo the decisions in such a potpourri. For instance, under the Epidemic Diseases Actof 1897, the State governments have the power to take fitting measures for containing the spread of an infectious or contagious illness in their respective territorial regions. It is very reasonable to endow upon states such power. They have the apparatus, workforce and channels required to contain the inter-state and intra-state spread of dreadful diseases. Moreover, entry 6 of list 2 [*Public health and sanitation; hospitals and dispensaries*] is a state subject and thus gives states a better position in taking action and attempting damage control. Here, the role of the central government is restricted.
- d. Similarly, in the overlapping division of power under *Entry 29 of List III*¹⁵, both Parliament and Statescan make laws on issues that include the spread of infectious or communicable or contagious diseases between two or more states. Disaster Management as a subject of legislation fails to find a place neither in List II or List III nor does a specific topic in List I explicitly govern this. In this analogy, the DMA, 2005 could just have been legislated upon by the Parliament in the exercise of its residuary forces of law-

¹⁵ Entry 29 of List III:

Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

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making under *Article 248*, read with *Entry 97 of List I*. This underlines critical legislative lacunae where functions have been granted to both or the law is silent.

- e. The central as well as the state government must work in cooperation towards assimilating and creating stocks of healthcare and infrastructure as need be. There must be adequate decentralisation in resource allocation and replenishment of resources



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